

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERIPRISE FINANCIAL SERVICES, INC.
(F/K/A AMERICAN EXPRESS FINANCIAL
ADVISORS, INC.),

Plaintiff,

v.

NEIL H. GENDREAU,

Defendant.

Civil Action No. 4:04-cv-40221

**PLAINTIFF'S MOTION FOR
ENTRY OF JUDGMENT**

Plaintiff Ameriprise Financial Services, Inc. (f/k/a American Express Financial Advisors, Inc.) ("Ameriprise" or "AEFA") hereby moves for entry of judgment against the defendant, Neil H. Gendreau ("Gendreau").

BACKGROUND

As set forth in the affidavit of Mitchell W. Granberg, Esq. ("Granberg Affidavit"), filed herewith under seal, the parties entered into a Settlement Agreement and Stipulation of Judgment ("Settlement Agreement") effective May 13, 2005.¹ Granberg Aff. Ex. B. The execution of the Settlement Agreement followed the entry of injunctions against Gendreau by this Court and the National Association of Securities Dealers ("NASD"). Order of this Court, Nov. 10, 2004; Granberg Aff. Ex. A (NASD Order).

¹ The Settlement Agreement contains a confidentiality clause. See Granberg Aff. Ex. B, ¶ 6. Although arguably that clause is not implicated by the filing of a motion with the Court to enforce that agreement, in deference to that clause Ameriprise has filed an accompanying Motion to Impound the Affidavit of Mitchell W. Granberg, Esq., which quotes relevant portions of the Settlement Agreement as well as attaches the Settlement Agreement as Exhibit A thereto.

The above-captioned matter was initiated against Gendreau on October 27, 2004, and after a hearing on Ameriprise's motion for preliminary injunctive relief against Gendreau, the Court issued a preliminary injunction on November 10, 2004. The parties participated in an expedited arbitration before the NASD, and the NASD arbitration panel entered a stipulated injunction against Gendreau. Granberg Aff. Ex. A. The parties then entered into (1) the Stipulated Order in NASD-DR Arbitration No. 04-0762, *In the Matter of the Arbitration Between AEFA Financial Advisors, Inc. against Neil H. Gendreau*, filed with the National Association of Securities Dealers Arbitration on or about May 17, 2005, and (2) the Settlement Agreement. Granberg Aff. Ex. C, B.

ARGUMENT

As stated in the Stipulated Order, which was executed by both parties, Gendreau agreed that the Stipulated Order "shall constitute a confession of judgment that will be enterable before both the U.S. District Court and the NASD to ensure the satisfaction of the award, the terms of which have been agreed to by the parties." Granberg Aff. Ex. C.

As detailed further in the Granberg Affidavit, Gendreau stipulated to judgment in favor of Ameriprise in the amount of \$55,000 with a first payment of \$15,000 to be made by July 31, 2005. *Id.* As set forth in the Granberg Affidavit, Gendreau has not made this payment; further, as demonstrated by e-mail correspondence attached to the Granberg Affidavit as Exhibit D, it appears that Gendreau has no intent (and likely never had any intent) of satisfying the stipulated judgment, but rather intends to engage in contumacious disregard of it. Indeed, Gendreau did not respond to correspondence sent to him by Mitchell W. Granberg on August 19, 2005, by certified mail demanding payment, even though he signed the certified mail receipt acknowledging receipt of the letter. Granberg Aff. Ex. E, F.

As further set forth in the Granberg Affidavit and the Settlement Agreement, Ameriprise is entitled to accelerate payment in the event of a default by Gendreau. Granberg Aff. ¶ 8 & Ex. B, ¶ 1. Finally, as again set forth in the Granberg Affidavit and the Settlement Agreement, Ameriprise is entitled to collection costs, including attorneys' fees, as part of the judgment. Granberg Aff. ¶ 9 & Ex. B, ¶ 2.

The Granberg Affidavit sets forth the number of attorney hours and the total attorneys' fees that Ameriprise was required to incur to bring this motion against Gendreau. Granberg Aff. ¶ 15. The legal tasks which Ameriprise has undertaken or will be required to undertake include preparing and filing the instant motion and supporting materials; appearing at any hearing ordered by the Court on the instant motion; obtaining a writ of execution from the Civil Clerk; and engaging in collection tasks, including investigatory steps and the preparation, filing, and arguing of attachment and trustee process motions. As set forth in the Granberg Affidavit, the total costs Ameriprise has incurred in the course of these tasks is \$4,571.50. Granberg Aff. ¶ 15. In addition, Ameriprise will incur additional costs and fees associated with appearing at any hearing ordered by the Court on the instant motion; obtaining a writ of execution from the Civil Clerk; and engaging in collection tasks, including investigatory steps and the preparation, filing, and arguing of attachment and trustee process motions. As it is entitled to recover these fees and costs from Gendreau pursuant to the Settlement Agreement, Ameriprise requests that it be allowed to submit a final affidavit of additional costs and fees at the appropriate time.

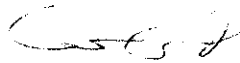
CONCLUSION

Plaintiff Ameriprise Financial Services, Inc.(f/k/a American Express Financial Advisors, Inc.) hereby moves for entry of judgment against the defendant, Neil H. Gendreau, in the amount of \$59,571.50, plus additional attorneys' fees and costs to be established by affidavit of counsel at the appropriate time.

Respectfully submitted,

AMERIPRISE FINANCIAL SERVICES, INC. (F/K/A
AMERICAN EXPRESS FINANCIAL ADVISORS,
INC.).

By its attorneys,



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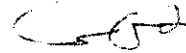
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DATED: October 6, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the following individual at the address listed below by first class mail on October 6, 2005:

Mr. Neil Gendreau
415 Boston Turnpike Road, Suite #213
Shrewbury, MA 01545



C. Alex Hahn, Esq.